Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
ITA Informal Request for Certification	)	
To Coordinate the Power Radio Service,	)	RM-10687
Railroad Radio Service	)	
And Automobile Emergency Radio Service	)	
Under Part 90 of the Commission's Rules	)	

OPPOSITION OF
AMEREN, INC. AND DOMINION RESOURCES, INC.

Ameren, Inc. ("Ameren"), and Dominion Resources, Inc. ("Dominion"), by counsel and pursuant to Section 1.405(a) of the Commission's Rules, hereby respectfully submits comments in opposition to the request made by the Industrial Telecommunications Association, Inc. ("ITA") for certification to coordinate and certify certain radio services for the utility, railroad, and automobile emergency industries. In these comments, Ameren and Dominion (collectively, the "Utilities") explain first why opening the coordination of certain utility frequencies to any additional coordinators is not beneficial. The Utilities then explain why the ITA's petition, specifically, should be denied.

INTRODUCTION

Combined, the Utilities are providers of gas and electric utility service to almost seven million customers, across service areas spreading from Connecticut to North Carolina, and from Virginia to Missouri. Ameren, through various subsidiaries, provides electric and gas service to over 2.4 million customers across a 51,000 square mile service area in Missouri and Illinois. Dominion, through its subsidiaries, serves over four million electric and natural gas customers across the East Coast and parts of the Midwest.

The Utilities' vast infrastructure is maintained and protected by thousands of employees using complex networks of hundreds of radio transmitters and thousands of mobile radios operating over dozens of radio frequencies.[1] Radio communications, like mobile voice and mobile data dispatch, are integral to the daily operations of the Utilities' energy generation, transmission and distribution systems. The Utilities rely on unencumbered radio communications to protect their employees and infrastructure, especially during hazardous weather conditions and other emergencies. Dominion's radio system for its electric operations in the North Carolina and Virginia service territory includes approximately 4,100 mobile and portable radio units used to span a 32,000 square mile service territory. Dominion's radio system for gas operations covers a five-state region (West Virginia, Ohio, Pennsylvania, New York and Maryland) and includes approximately 2,015 mobile and portable radio units and 152 fixed communications sites. In addition, Dominion's nuclear power plants each operate approximately 400 portable radio units. Ameren operates approximately 3200 trunked mobile and portable radios across its service area and 900 trunked radios at its various power plants. Ameren also operates approximately 700 conventional mobile and portable radios across its service area and 500 conventional portable radios at its various power plants.

The Utilities' intricate radio networks have expertly been coordinated for decades by the United Telecom Council ("UTC"), the certified coordinator for power radio services. In addition, the UTC has been a vigorous advocate for the Utilities and other members of the Critical Infrastructure ("CI") industry before the Commission in various proceedings. The Utilities generally support the UTC's comments in this proceeding.

[1] Dominion operates in the 48 MHz, 150 MHz, 450 MHz, 800 MHz, 900 MHz, 2 GHz, 6 GHz, 10 GHz, and 18 GHz bands. Ameren operates in the 48 MHz, 150 MHz, 450 MHz, 800 MHz, 900 MHz, 2 GHz, and 6 GHz bands.

I. The Commission Should Not Alter Its Longstanding Policy Of Permitting A Sole Power Radio Service Coordinator.

The Utilities believe the Commission, when it otherwise consolidated the private radio frequencies, had good reason to permit a single entity to coordinate certain utility radio licenses. The Utilities suggest that the Commission's decision is even more appropriate in light of recent demands placed upon utilities and their radio frequencies, and should not be abandoned now, in favor of entry by any additional entities.

Since 1997, the Commission has taken several steps to introduce competition into the frequency coordination business. In 1997, for example, when the Commission combined twenty forms of private land mobile services into two general pools, the Commission permitted the coordinators from these individual services to perform coordination of most other types of private land mobile radio.[2] In so doing, the Commission believed that permitting these coordinating bodies to provide identical services would bring to radio licensees certain benefits of competition, such as better service and lower prices.

The Commission recognized in the *Second Report & Order*, however, that the benefits of competition were not of ultimate concern to certain classes of licensees whose demand for complete reliability and dependability of their radio systems outweighed any potential benefits of increased efficiency or reduced cost. The Commission determined, therefore, that the coordination of certain frequencies licensed to entities like electric and gas utilities, which serve "critical safety functions," should be performed in certain portions of the band by a sole coordinator "who is intimately familiar with the use of these frequencies."[3] The Commission's

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[2] In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, *Second Report &Order*, 12 FCC Rcd 14307 (1997).
[3] *Id.*, ¶ 17.

decision was, and remains, consistent with its Rules that require the coordination of various public safety radio services to be performed by exclusive coordinators.

The Commission's determination also was consistent with Executive Order 13010, issued in 1996 by President William J. Clinton, which recognized that "certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States."[4] The Executive Order instructed federal agencies to ensure that entities, such as "electrical power systems" and "gas and oil storage and transportation" systems, were protected. By retaining a single entity to coordinate the licenses of these entities, the Commission ensured that the "critical communications capabilities" of utilities and other parties could best be protected.[5]

The protections identified in the Executive Order and in the Commission's *Second Report & Order* are even more applicable today. In addition to the traditional uses of utility radio systems, such as to protect linemen who work during outages under the poorest possible conditions, utility radio systems also have become a vital part of utilities' responsibilities related to homeland security. For example, utility radio licenses are increasingly used to provide real-time diagnostic information regarding energy production facilities and to monitor transmission and distribution facilities to ensure secure, reliable and consistent energy delivery.

Given the increased demand placed on utility radio networks, it makes little sense for the Commission to abandon the present system of exclusive coordinators, which has worked for decades, in favor of a system involving several competing entities, which the Commission determined only a few years ago would pose a threat to the reliability of these systems. The Utilities urge the Commission, therefore, to stay the course. Now is not the time to open the

[4] Exec. Order No. 13,010, 61 Fed. Reg. 37,347 (Jul. 15, 1996).
[5] *Second Report & Order*, ¶ 17.

power radio service to dozens of coordinators unfamiliar with utility licensees, their business and security needs, or their systems.[6]

II. ITA Is Not Representative of Utility Licensees.

In addition to general concerns with opening the coordination of utility licenses to any additional coordinating bodies, the Utilities possess specific concerns as to the ITA's petition. In its petition, the ITA borrows a set of factors used by the Commission in a previous proceeding relating to coordination in the 800 MHz and 900 MHz bands to argue that it is qualified to become a coordinator in the bands the Commission has reserved from competition. The first of these factors, and the one with which the Utilities take most serious issue, is whether the ITA is representative of the licensees it seeks to coordinate.

The ITA argues that it is representative of the utility, railroad and automobile emergency industries because it has a membership that includes "a large cross-section of the private land mobile industry."[7] The ITA also claims that its membership includes railroad, utility and automobile emergency companies, although it does not identify any of these clients. It also fails to note whether it has any experience performing licensing work for these entities. Rather, the ITA offers only that these licensees it claims as members "use their communications systems for safety-of-life operations on a daily basis in services that ITA now seeks certification to coordinate."[8] If the ITA has never performed any coordination for these entities, it is hard to

[6] Although the Commission is confronted only with a petition from the ITA, it should expect that multiple other coordinators will seek to enter the power radio service coordination business. This occurred, for example, when the UTC sought permission to coordinate in the 800 MHz and 900 MHz bands, and multiple other coordinators, including the ITA, joined the request. In re United Telecom Council, *Order*, 16 FCC Rcd 8436 (2001).
[7] ITA Petition at 6.
[8] Id.

understand its claim that it is "'intimately familiar,' not only with these frequencies, but also with these applicants."[9]

Moreover, even if the ITA has performed licensing work for utility frequencies, such coordination could only be in certain areas of spectrum, such as the 800 MHz and 900 MHz bands, which are fundamentally different from the spectrum it now seeks to coordinate. In the 800 MHz and 900 MHz bands, a single entity is licensed on a given frequency, and coordination is limited to the fairly simple task of determining geographic compatibility with other licensees operating on the frequency. By comparison, in the shared frequencies that make up a considerable portion of a utility's radio network, coordination is far more complex. This is but one reason why the Commission has declined to open the coordination of these bands to entities unfamiliar with the diligence and skills required, and why it should continue to do so now.

The Utilities also question whether the ITA has any interest beyond its own bottom line in regards to representing utilities. In recent proceedings before the Commission that have pitted the interests of utilities against that of the ITA's customer base, the ITA consistently has sided with its clients at the expense of utilities.

In a proceeding currently before the Commission, for example, the ITA is a co-sponsor of a plan advocated by Nextel Communications, Inc., which seeks to remedy problems of interference imposed upon public safety radio systems and private wireless operators like utilities in the 800 MHz band caused by incompatible private wireless entities permitted to operate in the band.[10] The Nextel/ITA sponsored "Consensus Plan" is unanimously considered by the utility industry to be harmful to utility licensees. Nonetheless, the ITA has supported the plan, which initially featured a mechanism by which utility licensees would be forced to relocate to other

[9] Id. at 7.

bands, or to retune in their own band, at their own cost of millions of dollars per company--despite the fact that the interference sought to be alleviated was not caused by the utility industry and the utility industry would not benefit from the relocation.[11] Although the ITA and Nextel eventually added funding to the proposal for utilities, which the utility industry considers inadequate,[12] ITA continues to support a plan that will force upon utilities unjustified costs, and worse, will jeopardize various utility operations by placing utility licensees into a guard band where vital operating licenses will be subject to harmful levels of interference.

The Consensus Plan also proposes to limit the ability of utilities to gain additional spectrum for several years. This advancement of private wireless interests at a cost to utility licensees is in keeping with the ITA's position in still other proceedings. For example, in response to a Commission *Public Notice*[13] precipitated by a study from the National Telecommunications and Information Administration,[14] which reported a pressing need of utilities and other CI entities for increased amounts of dedicated radio spectrum, the ITA filed comments vigorously opposing such spectrum dedication.[15]

These proceedings make clear that the ITA is a forceful opponent of the utility industry's position on radio licensing matters. Where the utility industry has sought additional or dedicated spectrum, the ITA has stood in its way. Where the utility industry has sought to protect its licenses from the Nextel/ITA plan roundly considered antithetical to the safety and integrity of

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[10] Improving Public Safety Communications in the 800 MHz Band, *Notice of Proposed Rulemaking*, WT Docket No. 02-55 (rel. Mar. 15, 2002).
[11] *See* "Promoting Public Safety Communications," Nextel Communications, Inc. (filed Nov. 21, 2001).
[12] *See, e.g.,* Comments of Ameren Corporation, WT Docket No. 02-55 (filed Feb. 10, 2003)
[13] *See* Wireless Telecommunications Bureau Seeks Comment on MTIA Report on Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, *Public Notice*, 17 FCC Rcd 2458 (2002).
[14] *See* Marshall W. Ross & Jeng F. Mao, "Current and Future Spectrum Use by the Energy, Water, and Railroad Industries: Response to Title II of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 Public Law 106-553," U.S. Department of Commerce, National Telecommunications and Information Administration (Jan. 30, 2002) at xxi.
[15] *See* Comments of the Industrial Telecommunications Association, Inc., DA 02-361 (filed Mar. 18, 2002).

utility radio systems, the ITA has been equally adamant in its support of the plan. It strains credulity to believe that, in light of the numerous positions the ITA has taken in opposition to the entities for whom it now seeks to coordinate, the ITA is at all representative of the utility industry.

The Commission also should consider the fairness with which CI entities may be treated should the ITA be permitted to coordinate frequencies for its primary clientele, for whom it advocates mightily, and the utility industry, for whom it appears to have little concern. The process of coordination, like any negotiation, requires give and take from both sides in a licensing matter, with the benefits and burdens of each party often determined by the frequency coordinator. Given the ITA's vigorous support of its business clientele, the Utilities question whether the burdens might flow incongruously against utility clients were the ITA to be permitted to coordinate frequencies for both types of entities.

Utilities are, and will remain, best served by the presence of a single coordinator, which has advocated for the utility industry for decades, which actively supports efforts by the industry to gain needed spectrum, and which continues to oppose the Nextel/ITA plan for reorganizing the 800 MHz band. By reserving to the UTC the function of coordinating certain utility frequencies, the Commission understood the unique and precarious position in which utility radio networks rest. The Commission should ensure, therefore, that the coordination of CI radio licenses will not be compromised by introducing new coordinators into the power radio service bands.

CONCLUSION

The Commission's decision in 1997 to permit a single entity to coordinate certain utility, railroad, and automobile emergency radio licenses remains sound. The need for reliability in the

radio networks of critical infrastructure industry should be of paramount concern to the Commission, trumping even the interest in increased competition. The rationale behind the Commission's decision to protect these licensees applies with even more force today, when utilities must use their radio systems to protect their energy production and distribution systems as part of their continued homeland security duties. The UTC stands as a capable, competent, and efficient coordinator for the utility industry, and, unlike the ITA, stands with the utility industry in matters that affect their radio networks. Accordingly, Dominion and Ameren urge the Commission to deny the ITA's petition, and to decline to issue a Notice of Proposed Rulemaking.

Respectfully submitted,

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